IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2171 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No

2 To be referred to the Reporter or not ? No

3 Whether their Lordships wish to see the fair copy of the judgment ? No

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No

5 Whether it is to be circulated to the civil judge ? No

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SHANTABEN WD/O GABHAJI THAKOR - Appellant(s)
Versus
SPECIAL LAND ACQUISITION OFFICER & 1 - Defendant(s)

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Appearance :
MR KM SHETH for Appellants
MR LR PUJARI, ASSTT. GOVT. PLEADER for Respondents

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 11/10/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant Appeal under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants, who are awarded additional compensation at the rate of Rs.25/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.3/- per sq.mt. for their acquired lands, vide judgment dated September 29, 1999, rendered by the learned Assistant Judge, Mehsana, in Land Acquisition Reference No.1275 of 1992, claim that while determining the compensation payable to the appellants, they should have been granted reasonable rise in price of lands at the rate of 10% p.a. in view of gap of five years between notification published under Section 4(1) of the Act issued for acquiring the lands of village Usmanabad earlier and the notification issued in the instant case under

Section 4(1) of the Act, and should also have been awarded interest on solatium in view of the decision of the Supreme Court in *Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada – (2005) 9 SCC 123*.

2. From the record of the case, it is evident that the land of the appellants situated in village Usmanabad, Taluka: Kalol, District: Mehsana, was acquired for the public purpose of construction of Narmada Canal Project pursuant to notification issued under Section 4(1) of the Act which was published in the official gazette on July 23, 1990. After declaration under Section 6 of the Act was published in the official gazette on October 4, 1990, notice was issued to the deceased who was father of the appellants for determination of compensation payable to them. The deceased had appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.100/- per sq.mt. However, having regard to the

materials placed before him, the Special Land Acquisition Officer had awarded compensation to the deceased at the rate of Rs.3/- per sq.mt. by his award dated June 29, 1991. Feeling aggrieved, the deceased had sought Reference which was registered as Land Acquisition Reference No.1275 of 1992. The deceased had relied upon the previous award of the Reference Court relating to the lands of village Vadsar, Taluka: Kalol, District: Mehsana, rendered in Land Acquisition Reference No.1129 of 1990 whereas the acquiring authorities had relied upon the previous award of the Reference Court relating to the lands of this very village, i.e. village Usmanabad rendered in Land Acquisition Reference Nos.1148 of 1990 to 1151 of 1990 and Land Acquisition Reference Nos.1930 of 1991 to 1934 of 1991. The Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was relevant as well as furnished good

guidance for the purpose of determining the market value of the land acquired in the instant case. Therefore, the said previous award which was produced at Ex.31 was taken into consideration for the purpose of determining the market value of the land acquired in the instant case. On the basis of the said previous award, the Reference Court has awarded additional compensation to the claimants at the rate of Rs.25/- per sq.mt.

3. The judgment and award rendered by the Reference Court makes it very clear that the deceased claimant had asserted that the was entitled to grant of reasonable rise in price of land because of gap of time in the two notifications. The said plea was rejected by the Reference Court in the following terms:

> *“16. Shri Mehta, the learned advocate of the claimant has argued that there is a difference of about 6 years between the notifications of previously and present acquisition of the land and hence, the claimant would be entitled for additional*

compensation at the rate of 10% per year. Now, it is true that there is a difference of six years between these two notifications, but a judgment vide Exh.31 is delivered in the year 1998 and at that time the learned Assistant Judge has considered all the relevant and material facts submitted before him and hence, at this stage a difference of 6 to 7 years between the two notifications cannot be taken into consideration and on that basis only the claimant cannot be awarded an amount of additional compensation at the rate of 10% per year and hence, I don't agree with submissions made by Shri Mehta, the learned advocate of the applicant."

4. Further, the award impugned in the Appeal further shows that the learned Judge has not granted interest on solatium.

5. Under the circumstances, the deceased claimant who was denied benefit of rise in price of lands at the rate of 10% p.a. and not granted interest on solatium, had filed the instant appeal. The record further shows that during the pendency and final disposal of the Appeal, the original appellant died

and therefore, his heirs have been brought on record of the case.

6. This Court has heard Mr.Kamlesh B.Sheth, learned cousnel for the appellants and Mr.L.R.Pujari, learned Assistant Government Pleader for the respondents. This Court has also taken into consideration the documentary evidence produced by the learned counsel for the appellants for perusal of the Court.

7. From the impugned judgment, it is evident that what is relied upon by the Reference Court for the purpose of awarding additional compensation to the claimant at the rate of Rs.22/- per sq.mt. is the previous award of the Reference Court relating to the land of this very village which was rendered in Land Acquisition Reference Nos.1148 of 1990 to 1151 of 1990 and other cognate matters. In the said case, lands from village Usmanabad were acquired for the public purpose pursuant to notification issued under Section 4 of the Act which was published in the official

gazette on December 3, 1985. The Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.50 ps. per sq.mt. by his award dated October 14, 1988. Feeling aggrieved, the claimants had sought References and the Reference Court had awarded additional compensation to the claimants at the rate of Rs.23.50 ps. per sq.mt. by judgment and award dated October 29, 1998. There is no manner of doubt that there is gap of time of about five years between the notification which was issued earlier under Section 4(1) of the Act for acquiring the lands from this very village and the publication of notification issued under Section 4(1) of the act for acquiring the land in the instant case. The Supreme Court has ruled in catena of reported decisions that if there is gap of time between the two notifications, the claimant would be entitled to reasonable rise in price of land at the rate of 10% p.a. Under the circumstances, this Court is of the opinion

that the Reference Court was not justified in denying rise in price of land to the appellants on the ground that previous award was rendered on October 29, 1998, and therefore, rise in price of land till the year 1998 was considered and granted by the Court while rendering the said award. It may be mentioned that compensation under the Land Acquisition Act has to be paid to the claimant with reference to publication of notification issued under Section 4(1) of the Act. Therefore, it will have to be held that rise in price of the lands was considered in the previous award upto the date of publication of notification issued under Section 4(1) of the Act which was on December 3, 1985, and not upto the date of judgment of the Reference Court, which is October 29, 1998.

8. On the facts and in the circumstances of the case, this Court is of the opinion that the claimants would be entitled to benefit of

rise in price of land for five years at the rate of 10% p.a. and therefore, would be entitled to payment of additional compensation at the rate of Rs.12.50 ps. per sq.mt. over and above what is awarded by the Reference Court.

9. Further, the impugned award does not indicate that interest is awarded to the appellants on amount of solatium which is found payable to them. In *Jaya Chandra Mohapatra v. Land Acquisition Officer, Rayagada* (supra), the Supreme Court has held that a claimant is entitled to solatium under Section 23(2) of the Act and interest thereon in view of the provisions of Section 23(1-A) of the Act. Therefore, to that extent, the award impugned in the Appeal will have to be modified.

10. For the foregoing reasons, the Appeal partly succeeds. It is held that over and above what is awarded by the Reference Court to the appellants, the appellants shall also be

entitled to additional compensation at the rate of Rs.12.50 ps. per sq.mt. being the rise in price of lands at the rate of 10% p.a. The appellants would also be entitled to interest on the amount awardable to them under Section 23(1-A) and Section 23(2) of the Act. The Appeal is allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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